IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10866 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SADHU MANUPRASAD CHATURDAS

Versus

DEPUTY DIRECTOR (TRAINING)

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Appearance:

MR MR ANAND for the Petitioner.

Ms. Nandini Joshi, ASSTT. GOVERNMENT PLEADER for the Respondents.

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CORAM : HON'BLE MR.JUSTICE KUNDAN SINGH

Date of decision: 20/11/2003

ORAL JUDGEMENT

As this is an old matter of 1993, it is

being disposed of on merits on the basis of material on record with the special assistance of the learned Assistant Government Pleader.

2. This petition has been filed for a direction to the respondents to give the petitioner's daughter admission in PTC course under the category of scheduled tribe and to consider the members of nomadic tribe as schedule tribe candidates for reservation of 14 seats as per GR dated 15.6.1992 which was restored by GR dated 23.6.1993, declaring that the provisions of item no. 4 in the appendix to Gujarat Educational Institutions (Regulation) Act, 1984 Annexure "I" is unconstitutional and in violation of Article 14 of the Constitution of India.

3. The petitioner's daughter applied for admission in PTC course under the category of schedule tribe as she is a member of nomadic tribe and as per the GR dated 15.6.1992, nomadic tribes are included in the quota of 14% seats reserved for scheduled tribe and nomadic/de-notified tribes. The resolution dated 15.6.1992 prescribes the criteria for admission eligible for 10+ 2 or its equivalent certificate diploma course. She was called by a letter dated 14.7.1993. There was no procedure prescribed except production of original mark-sheet. She was required to be present at S.V.B. Adhyapak Maunder, Prabhas Patan on 10.8.1993 at 1.00 p.m. She remained present on that date before the aforesaid institution. She requested that Prabhas Patan is not convenient to her and she may be given admission to Vadhvan, Dist: Surendranagar. Accordingly, she was given admission to Vadhwan and an entry to that effect was made in the computer. Subsequently, she was refused admission and her admission was cancelled without passing any order and without affording any opportunity. Hence, this petition was filed on the ground that the petitioner's daughter obtained 71.14% marks and the last merit for scheduled tribe prescribes as 71.05%. No order was passed for cancellation of the admission which was made on10.8.1993. Inspite of the oral request made to Deputy Director of Primary Education, the authority has not passed any speaking order regarding cancellation of the admission to the petitioner's daughter.

4. It appears that the admission was cancelled relying on the GR dated 4.6.1993 whereby Education Department has deleted the members of Nomadic and denotified tribes from the benefit of reservation of 14% and it is not mentioned in that GR that it would not

be applicable to the cases of PTC. That GR is applicable for the Engineering/Pharmacy diploma courses. Subsequently, that Government has restored the benefit of nomadic and denotified tribes again by the GR dated 23.6.1993. Thus, the Government has not deleted the members of nomadic and denotified tribes from the benefit of reservation of 14% seats after 23rd June, 1993. The respondent no.1 has committed an error in applying the GR dated 4.6.1993. The respondent no. 1 was waiting for the separate GR passed on 23rd June, 1993 whereby the Government has restored the benefit of nomadic and denotified tribes and included the members in quota of 14 seats for reservation. The Government resolution dated 15.6.1993 provides that nomadic tribes to be treated as scheduled tribes for educational purpose. Pharmacy and Engineering diploma admission was available on the basis of 10th standard. The same is the case of PTC. So, there could be no distinction between two categories of the students relating to the same community. The petitioner sent various representations to the authority concerned, but no response. The petitioner's daughter was given admission in C.P.Ed. course under the category of Scheduled tribe as the authority of C.P.Ed. has rightly applied the GR dated 15.6.1992 and latest GR dated 23rd June, 1993. While, PTC is not treating the candidates of nomadic tribes as scheduled tribe. Hence, on this ground, erroneously admission has been refused to the petitioner's daughter. If any classification is made by the Education Department, it is unconstitutional, arbitrary and not maintainable in the eye of law on the ground that if PTC is a special course wherein engineering, technical course and C.P.Ed. candidates of nomadic tribes are included within the limits of 14% reserved for scheduled tribe candidates. The candidates of nomadic tribes are given benefit as if they are scheduled tribe candidates, while in other courses in PTC course, the respondents have committed an error in making distinction. As such, the GR dated 30th September, 2003 is unconstitutional, irrational, discriminatory and in violation of Article 14 of the Constitution of India.

5. Affidavit-in-reply has been filed by the respondent no.1 Deputy Director of Primary Education stating therein that the State legislature has enacted a law as Gujarat Educational Institution (Regulation) Act 1984 to regulate the institutions established and maintained for conducting courses of institutions leading to grant of certain certificates in the State of Gujarat. Section 5 provides for prohibition of sending the candidates for examination to be conducted by the Board unless such educational institutions are recognised under

the provisions of the Act. Section 6 provides that no recognised institution shall admit any student in the educational institution except in accordance with the Rules made in this behalf. The Government of Gujarat has framed the Rules called Gujarat Educational Institutions (Pre-primary and Primary teachers training colleges) Rules, 1984. Rule 6 of the said Rules says that educational institutions shall admit students in accordance with the provisions contained in appendix V. Clause 4 of the Appendix V framed under Rule 6 provides for the reservation of candidates belonging to different categories which is reproduced hereinunder:

"Clause : 4 : There shall be reserved 7% of the seats for the candidates belonging to Scheduled caste, 14% of the seats for the candidates belonging to Scheduled Tribes and 10% of the seats for the candidates belonging to other socially and educationally backward classes out of the total seats available in the first class in the institution." The students who are belonging to nomadic tribes are not entitled to the benefits of reservation as per the provisions contained in the Rule. As the question arose in respect of the admission of the students who are claiming reservation as candidates of nomadic tribes, hence the question was referred to the State Government. The State Government vide letter dated 30th September, 1993 has clarified that in pursuance of the provisions contained in the Act and the Rules made thereunder and more particularly schedule V under Rule 6, it is clear that no separate reservation has been provided for the candidates of nomadic tribes and therefore, if the candidates are of casts which are either included in the scheduled caste or scheduled tribes or in the the list of castes recognised as other socially and backward class under the Baxi Panch, those students/candidates should be given benefit accordingly. On the basis of the general merit list, the petitioner belongs to community which is known as Vairagi Bava and the said community has been recognised as one of the communities of SEBC under the award of Baxi Panch. The last candidate under the said category was admitted in the said course had obtained 74.42% marks. While the petitioner's daughter obtained only 70.14% of marks. Hence, she was not entitled for the benefit of reserved category. It is further submitted that sending of a letter does not amount to admission in any manner. The resolutions mentioned are applicable to the admission in PTC course and the action of the respondents is not violative of Articles 14 and 15 of the Constitution of India.

6. On the basis of the averments made in the affidavit, the learned Assistant Government Pleader pointed out that the petitioner's daughter is not entitled for the benefit of reserved category. Moreover, vide order dated 15.10.1993, this Court directed that the respondents shall keep one post vacant for the admission in PTC course qua reserved category. Vide order dated 6th April, 1994, interim relief was refused. Ad-interim relief has become infructuous and granting of the same at this stage would amount to allowing the petition. The learned Assistant Government Pleader also submitted that at the relevant time, the classification for PTC was prescribed as S.S.C. and now this qualification has been prescribed as H.S.C. On the basis of the clarification required for the P.T.C. course also, the petitioner is not entitled for admission after near about 10 years. Therefore, this petition has become infructuous.

7. I have carefully considered the averments made in the affidavit-in-reply and the relevant papers on record. In the facts and circumstances, the petitioner is not entitled for the benefit claimed by way of this petition. Moreover, this petition has become infructuous in view of the fact that interim order granted by this Court has been refused lateron. Therefore, this petition deserves to be dismissed as having become infructuous. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

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